

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NATHANIEL JAMAR HUDSON,

Petitioner,

Case No. 1:07-CV-255

v.

Hon. Robert J. Jonker

PATRICIA CARUSO,

Respondent.

/

ORDER AND JUDGMENT
APPROVING REPORT AND RECOMMENDATION

The Court has reviewed the Magistrate Judge's Report and Recommendation (docket # 9) filed on August 2, 2007. Petitioner filed his Objections to the Report and Recommendation (docket # 10) on August 15, 2007.

Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify

the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Court has reviewed de novo the claims and evidence presented to Magistrate Judge Brenneman; the Report and Recommendation itself; and Petitioner's objections. After its review, the Court finds Magistrate Judge Brenneman's Report and Recommendation to be both factually sound and legally correct.

Petitioner's objection states that he has insufficient funds to properly exhaust his state-court remedies. He reasons that this Court should be aware of his inability to pay because his financial statements were made available as a result of his filing this action *in forma pauperis*. Petitioner's objection is addressed in the Report and Recommendation.

As explained in the Report and Recommendation, Petitioner bears the burden of showing exhaustion. Despite Petitioner's objection to the contrary, he has submitted no evidence to establish his financial status or inability to pay the state-court filing fees for the claims raised in this case. Petitioner has not carried his burden of showing exhaustion.

Petitioner's objection also claims that because of Magistrate Judge Brenneman's Report and Recommendation Petitioner is entitled to damages from District Judge Quist, Magistrate Judge Brenneman, or both in the amount of one million dollars. Petitioner's claim is frivolous, and irrelevant in a habeas proceeding. Moreover the factual allegations

underlying his claim are so palpably incredible that they need not be addressed. *See Carson v. Burke*, 178 F.3d 434, 436–37 (6th Cir. 1999) (“Rule 4 dismissals are not limited to petitions that raise legally frivolous claims, but also extend to petitions containing factual allegations that are palpably incredible or false.”).

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge, filed August 2, 2007, is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Petitioner’s 28 U.S.C. § 2254 petition for habeas relief is DISMISSED for failure to exhaust available state-court remedies.

Dated: December 21, 2007

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE